

1. What is Tort Reform and how does it work?

“Tort reform” is shorthand for making changes in a state’s civil justice system in order to balance the scales, creating fundamental fairness for both plaintiff and defendant in liability cases. Unfortunately, trial lawyers got into the practice of filing hundreds of cases in plaintiff-friendly Mississippi jurisdictions known for big dollar verdicts. Often there was one Mississippi defendant, say, a pharmacy, and hundreds of out-of-state plaintiffs who used the legal system to pursue product liability or medical liability claims. Recognizing this tremendous imbalance against legitimate business operations and physicians’ practices, Governor Barbour made meaningful tort reform a major priority of his first term, and the vast majority of his reform recommendations were enacted by the Mississippi Legislature in 2004.

2. Before the reforms you implemented, how bad was the situation and how did it impact life and business in Mississippi?

Mississippi had a bad reputation in national business circles as a place where employers were unfairly targeted with frivolous lawsuits. Nearly every small business in Mississippi was one lawsuit away from bankruptcy. Juries were handing down outrageous monetary awards and hard-working small business owners, who couldn’t fight back with legions of lawyers, were among the hardest hit.

Trial lawyers across the country viewed Mississippi as a playground, a place to bring weak cases to trial because they knew the state’s civil justice system tilted heavily toward plaintiffs. The state’s national reputation as the home of jackpot jury verdicts had a devastating effect on the state’s economy, not to mention healthcare. Businesses simply weren’t willing to risk locating in Mississippi, doctors were leaving the state almost as quickly as plaintiffs were coming in, and every small business was one lawsuit away from bankruptcy.

Quoting Governor Barbour, The Wall Street Journal’s Stephen Moore described it this way in a May 10, 2008, piece: “Mississippi's antibusiness reputation was so awful, Mr. Barbour said, that the CEOs of several Fortune 500 companies told him specifically that they wouldn't consider locating in the state unless the tort system was fixed.

“For doctors, the situation was a little different – many who were inside the state were getting out as fast as they could. With 25%

annual increases in malpractice premiums, many physicians simply couldn't survive if they stayed.

"The outflux left some counties without a single obstetrician. In some cases, residents had to drive 100 miles to find a doctor.

3. People often associate tort reform with the health care industry. Have you seen effects beyond that sphere?

Much of the impact of Mississippi's 2004 tort reforms has been in health care with results like these: Medical malpractice insurance rates have fallen for four years, including a 20 percent reduction for 2009 that returns the premiums paid by Mississippi physicians for malpractice insurance to rates comparable to those paid in 2002; in addition to a reduction in rates, tort reform has opened the door for better accessibility to healthcare through an increase in the number of physicians insured by the state's largest malpractice insurance provider.

But the impact goes beyond health care. Tort reform is a critical factor in Mississippi's new pro-business environment. Companies like Toyota, GE Aviation, PACCAR, Federal Express, and Severstal either have already established or announced major facilities that put Mississippi in the forefront of the world's most advanced manufacturing processes and techniques.

Even after Hurricane Katrina on August 29, 2005 - the worst natural disaster in American history - and before the recession hit Mississippi in the third quarter of 2008, the state had achieved record employment, according to statistics compiled by the U.S. Department of Labor.

Per capita personal income grew by 27.8 percent from the end of 2003 to the end of 2008, or more than \$6,400 per person.

Much of that success can be attributed to tort reform.

4. Trial lawyers will claim that tort reform hurts their chances to achieve real justice and appropriate settlements for their clients. True?

Not in Mississippi. People who have been seriously injured and can prove their claims through the new, fair civil justice system still win in

court. The purpose of Mississippi's 2004 tort reform was not to deny any legitimate claim but simply to level the playing field. It's working.

5. What are the 3 most important reforms Mississippi implemented that other states should adopt?

From Mississippi's experience there are five major elements of tort reform:

- **Venue Reforms** - Frivolous lawsuits were often filed in jurisdictions with a history of high verdicts. The new law reformed venues to require trial in the county where the event in question occurred.
- **Damage Caps** - Non-economic damages were hard capped at \$500,000 in medical malpractice and \$1 million in all other cases. This removed the damage escalations and significant loopholes in previous legislation.
- **Joint Liability** - Mississippi's tort reform law eliminated joint liability and made defendants only responsible for the damages they caused. Under the previous law, a doctor, for example, could be allocated fault and damages beyond their reasonable share.
- **Innocent Seller** - A seller of a product (including medical equipment) can not be held liable unless he had control over the design, testing, manufacturing, packaging, or labeling of a product - or had knowledge of the defect. The 2004 reform eliminated a provision in the previous law that said even if a seller were found to be innocent and not liable, they would remain a defendant in the case. This provision had been inserted to allow lawyers to keep cases in a particular jurisdiction, state court, or prevent it from being removed to federal court.
- **Allocation of Fault** - Mississippi's legislation allowed for the allocation of fault to an immune entity or other entity as defined by the tort claims act, such as a community hospital.